

STATE OF MICHIGAN  
COURT OF APPEALS

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BERNARD P. KNASIAK,

Plaintiff-Appellant,

v

MARY M. SMITH,

Defendant-Appellee.

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UNPUBLISHED

February 16, 1999

No. 201046

Washtenaw Circuit Court

LC No. 96-007490-CZ

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order denying his motion for summary disposition or entry of a default judgment and, instead, dismissing the case for lack of service. Because plaintiff failed to furnish defendant with both a summons and a complaint as required under the Michigan Court Rules, the trial court properly dismissed plaintiff's action. Accordingly, we affirm.

Plaintiff, who at all times was proceeding in propria persona, filed a single document entitled "Summons and Complaint" seeking damages from his former mother-in-law.<sup>1</sup> He sent that document and other papers to defendant by certified mail, return receipt requested. Defendant apparently signed for the item, but, upon discovering that it was from plaintiff, crossed out her signature on the receipt and refused to accept the mail. Plaintiff subsequently sought entry of a default judgment, which was denied. Plaintiff thereafter filed a notice of entry of default and filed a motion for summary disposition under MCR 2.116(C)(9) requesting entry of a default judgment. The trial court denied the motion upon finding that defendant had not been served because she did not acknowledge service. The trial court then dismissed the case without prejudice because the time for service had expired. Plaintiff's motion for reconsideration was denied.

"A trial court's authority to enter a default or default judgment against a party must fall within the parameters of the authority conferred under the court rules." *Kornack v Auto Club Ins Ass'n*, 211 Mich App 416, 420; 536 NW2d 553 (1995). Specifically, the defendant must be properly served with a summons and a complaint in order to give the court personal jurisdiction over the defendant. Because failure to do so deprives the trial court of personal jurisdiction, the court is left without legal authority to

render a judgment. *Alycekey Co v Hasko Construction Co, Inc*, 180 Mich App 502, 505-506; 448 NW2d 43 (1989). Process may be served on an individual by delivering a copy of the summons and complaint to the defendant personally or by sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, with delivery restricted to the addressee. MCR 2.105(A)(1), (2). If delivered by mail:

Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2). [MCR 2.105(A)(2).]

If the court has personal jurisdiction over the defendant, it may issue a default judgment if the plaintiff complies with the procedural rules outlined in MCR 2.603.

The question plaintiff raises on appeal is whether service was accomplished when defendant signed for the letter, notwithstanding her subsequent revocation of her signature on the receipt. We find it unnecessary to reach this issue because a review of the record establishes that plaintiff's alleged service of process was improper.

Service of the summons is a necessary part of service of process. MCR 2.105(A); *Holliday v Townley*, 189 Mich App 424, 425-426; 473 NW2d 733 (1991). Although defects in the manner of service may sometimes be excused, a failure of service may not. *Id.* This case, like *Holliday, supra*, involves a complete failure of service of process.

Here, we find no indication in the record that a valid summons was ever issued or served on defendant. A copy of a summons does not appear in the lower court file and the docket entries fail to indicate that a summons was ever issued. Although plaintiff's complaint is entitled "Summons and Complaint," that document does not meet the requirements of a valid summons because it is not issued "[i]n the name of the people of the State of Michigan," it does not bear the seal of the court that issued it, and it does not contain the information required by MCR 2.102(B)(1)-(11) for a valid summons.<sup>2</sup>

Moreover, neither the proof of service that plaintiff filed nor the cover letter attached to the proof of service reflects that plaintiff ever delivered a separate summons to defendant. On the contrary, the lower court record merely indicates that plaintiff delivered only a copy of the above-described "summons and complaint" which, as discussed above, does not meet the requirements of a valid summons. Therefore, because plaintiff's attempted service did not include a valid summons, dismissal of the action was warranted. *Holliday, supra*. Moreover, where the trial court reaches the right result for the wrong reason, we will not reverse its decision. *Holland Home v City of Grand Rapids*, 219 Mich App 384, 400; 557 NW2d 118 (1996).

We affirm.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Jeffrey G. Collins

<sup>1</sup> Plaintiff's complaint alleged that defendant was involved in a conspiracy with her daughter (plaintiff's wife) and granddaughter to receive and conceal stolen property, commit grand larceny, conceal embezzled property, commit larceny by extortion, and to invade his privacy. He requested equitable and declaratory relief as well as damages, costs and fees in excess of \$500,000. Apparently, plaintiff, an inmate of the Michigan Department of Corrections, was suing his mother-in-law for actions she took on April 29, 1994. Plaintiff's brief on summary disposition describes that on April 29, he returned home from work to find that his estranged wife, defendant, and the other co-conspirators had removed, concealed, embezzled and sold off 95% of the marital assets because his wife decided to leave the marriage "under the guise of 'spousal abuse.'"

<sup>2</sup> Specifically, the "Summons and Complaint" does not contain the address of the court, the name of the court clerk, the date on which the summons was issued, the last date on which the summons is valid, a statement that the summons is invalid unless served on or before the last date on which it is valid, the time in which the defendant is required to answer or take other action, or a notice that if the defendant fails to answer or take other action within the time allowed, judgment may be entered against the defendant for the relief demanded in the complaint. See MCR 2.102(B)(1)-(11). Plaintiff apparently attempted to address some of these requirements in his July 2, 1996 cover letter to defendant that accompanied his "Summons and Complaint," but this attempt obviously cannot satisfy MCR 2.102(B).